

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION, et al.,

Defendants.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC.,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,

Defendant.

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 218

January 10, 2011

STEARNS, D.J.

This is the two hundred and eighteenth Compliance Order that has issued in this litigation. On December 15, 2010, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report (Quarterly Report). The Conservation Law Foundation has indicated that it will not file a response. The United States has responded to one substantive aspect of the status report as will be indicated.

I. Schedule Seven

Frederick A. Laskey, Executive Director of the MWRA, has certified a status report for November 2010, informing the court that the MWRA has been unable to begin construction of the control gate and floatables control at outfall MWR003 and the Rindge Avenue siphon relief, as mandated by Schedule Seven. The delay in undertaking this project, one of five that comprise the long-term combined sewer overflow (CSO) control plan for Alewife Brook, is attributable to ongoing issues involving the state wetlands permit and several construction and maintenance easements for Contract 12. The MWRA reports that before it can finalize the design for the control gate and floatables control at outfall MWR003, the City of Cambridge must complete construction of the CAM004 wetland basin and stormwater outfall, as well as the preliminary design of the CAM004 sewer separation project. This sequencing is intended to avoid cumulative construction impacts. Moreover, the preliminary design of the CAM004 sewer separation project will make it possible to predict the system hydraulic conditions that must be incorporated into the design for the control gate and floatables control.

The City of Cambridge has continued its efforts to obtain the necessary easements and rights of entry from the affected public and private landowners. Although the City is making substantial progress in its discussions with certain landowners, several of the impacted properties are the subject of a recent foreclosure sale requiring the City to renegotiate easement issues. The MWRA reports that it anticipates being able to commence design work by April of 2012.

A. Progress Report

1. CSO Program

a. Cambridge Sewer Separation

The MWRA reports that despite the reported delay, two of the other projects that make up the long-term CSO control plan for Alewife Brook are progressing satisfactorily. The City of Cambridge anticipates that it will substantially complete the CAM400 manhole separation project by March 31, 2011. In addition, the City has selected a bidder and has prepared the documentation to award Contract 12, although the official award awaits the finalization of the easements. The MWRA reports that it expects to award Contract 12 and issue the notice to proceed with construction by the end of March of 2011. The City of Cambridge is working with the selected contractor to expedite mobilization once the contract is signed. The City is also seeking to shorten the construction timeline for the CAM004 sewer separation project in order to meet the proposed December of 2015 construction completion date, the last milestone for the CSO control plan for Alewife Brook.

b. North Dorchester Bay Storage Tunnel and Related Facilities

The MWRA reports that progress continues on the construction of the pump station and the tunnel ventilation building, and that it remains on schedule to bring the North Dorchester Bay CSO storage tunnel and related facilities into service by May of 2011.

c. Brookline Sewer Separation

The Town of Brookline has selected the lowest responsive bidder on the second (and final) construction contract for the sewer separation project. It is awaiting final approval from the Massachusetts Department of Environmental Protection (DEP) before

making the formal award. The Town anticipates that it will complete construction of the project in advance of the July of 2013 milestone.

d. Charles River Valley Sewer/South Charles River

The MWRA reports that it is in ongoing discussions with the United States Environmental Protection Agency (EPA) regarding the EPA's challenge to the MWRA's determination that there are no feasible interceptor optimization improvements that will decrease CSO discharges to the Charles River. On December 14, 2010, the MWRA forwarded correspondence to the EPA and DEP, reiterating its conclusion and attempting to clarify the grounds for its decision. The United States in its response letter states that it will review the correspondence with a view to resolving the issue.

II. Comments

It appears that progress continues at an acceptable pace, and that despite the delays, the MWRA and the City of Cambridge are making diligent efforts to minimize any ultimate impact on Schedule Seven. The court anticipates that the MWRA, the EPA, and the DEP will come to a constructive and mutual resolution regarding the Charles River discharges issue.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE